

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

v.

MARK NASH,

23-CR-156 (JLS) (JJM)

Defendant.

DECISION AND ORDER

A grand jury returned an indictment charging Defendant Mark Nash with production and possession of child pornography in violation of 18 U.S.C. §§ 2251(a), 2251(e), 2252A(a)(5)(B), and 2252A(b)(2). *See* Dkt. 14. The case has been referred to United States Magistrate Judge Jeremiah J. McCarthy to hear and determine, and report and recommend on, all pretrial proceedings under 28 U.S.C. §§ 636(b)(1)(A) and (B). *See* Dkt. 16.

Before the Court is the balance of Defendant's motion, namely, for suppression of evidence derived from the search of a cell phone. Dkt. 26. The Government filed a response in opposition on November 7, 2024. Dkt. 32. Defendant did not reply. Judge McCarthy held oral argument on December 4, 2024. Dkt. 35.

On December 6, 2024, Judge McCarthy issued a Report, Recommendation, and Order (R&R). Dkt. 39.¹ In particular, he recommends granting the motion to

¹ Judge McCarthy amended his R&R on December 27, 2024. *See* Dkt. 46.

the extent that Defendant seeks to suppress evidence obtained from searching the cell phone, and otherwise denying the motion as moot. *See id.*

The Government objected—arguing that this Court should reject the R&R and order an evidentiary hearing. *See* Dkt. 47. Defendant responded in opposition on January 21, 2025.² Dkt. 49. The Government replied. Dkt. 51.

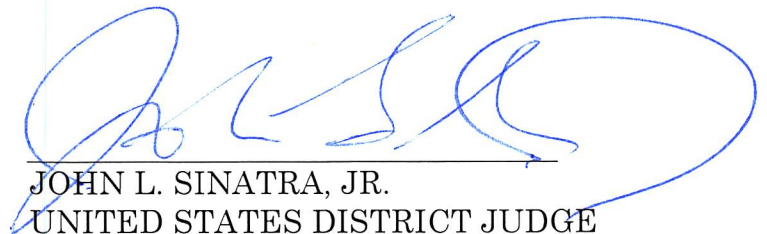
A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). A district court must review *de novo* those portions of a magistrate judge’s recommendation to which a party objects. 28 U.S.C. § 636(b)(1); 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59(b)(3). But a district court need not review the recommendation of a magistrate judge to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

² The Court notes that Defendant filed his response late. *See* Dkt. 48, 49.

This Court carefully reviewed the R&R, the objections briefing, and the relevant record. This is a close case on the current record. The several nuanced factual issues identified by the Government require credibility assessments and additional factual development. At that time, the result—whatever it may be—can be reached on that augmented record, aided by the Magistrate Judge’s assessment of witnesses’ credibility. For these reasons, the Court rejects the R&R’s recommendation to grant the suppression motion, and recommits the matter to the Magistrate Court to conduct the evidentiary hearing suggested by the Government’s papers. *See* Dkt. 47, at 3, 5, 6n.2, 8–12, 14–18.

SO ORDERED.

Dated: January 28, 2025
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE